

FILED ELECTRONICALLY		
<p align="center"><b>REQUEST UNDER 37 C.F.R. §1.705(d) FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT</b></p> <p>Address to: Petitions Commissioner for Patents PO Box 1450 Alexandria, VA 22313</p>	Attorney Docket No.	GHDX-008
	Confirmation No.	5600
	First Named Inventor	Melody A. Cobleigh
	Application Number	10/758,307
	Patent Number	7,569,345
	Filing Date	January 14, 2004
	Group Art Unit	1637
	Examiner Name	Celine Qian
Title:		Gene Expression Markers for Breast Cancer Prognosis

Sir:

Under 37 C.F.R. §1.705(d), Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the above-captioned patent, which issued on August 4, 2009. This request is timely filed within 2 months from the date of issue.

Provided herewith is: (1) the fee of \$200.00 as set forth in 37 C.F.R. §1.18(e); and (2) a statement of the facts involved.

The USPTO determined that the patent was entitled to 463 days of PTA (see attached USPTO PTA calculation). Applicants believe that this PTA determination was made in accordance with the USPTO's interpretation of the "Explanation of 37 CFR §1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)" published at 69 Fed. Reg. 34238 (June 21, 2004). Under that interpretation of the PTA statute, any USPTO delay under 35 U.S.C. §154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. §154(b)(1)(B), and so as a practical effect, PTA may be awarded under 35 U.S.C. §154(b)(1)(A) or 35 U.S.C. §154(b)(1)(B), but never both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision holding that the USPTO's interpretation of the PTA statute was incorrect [see *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008); hereinafter "Wyeth"]. The court determined that the PTA statute should properly be interpreted so that "the only way that periods

of time can overlap is if they occur on the same day.” Wyeth, slip op. at 8. Thus, Wyeth holds that a USPTO delay under 35 U.S.C. §154(b)(1)(A) overlaps with a delay under 35 U.S.C. §154(b)(1)(B) only if the delays “occur on the same day.” *Id.*

The USPTO delay under 35 U.S.C. §154(b)(1)(B) is from January 14, 2007 (3 year date) to August 4, 2009 (the issue date), a total of 933 days. Under Wyeth, Applicants submit that the USPTO delays under 35 U.S.C. §154(b)(1)(A) tallied on July 11, 2008 (22 days) and May 14, 2009 (42 days) overlap with this period, while the USPTO delays tallied on March 3, 2006 (354 days) and September 21, 2006 (18 days) do not. As such, under Wyeth, the total USPTO delay for the above-referenced patent is 1305 days (933 + 354 + 18).

The total delay for circumstances constituting a failure by the Applicant to engage in reasonable efforts to conclude processing or examination as set forth in 37 C.F.R. §1.704 is 470 days, as indicated on the enclosed PTA calculation from the USPTO.

In view of the above, Applicants submit that this patent is entitled to 835 days of PTA under 37 C.F.R. §1.703(f).

The subject patent is not subject to a terminal disclaimer.

Applicants are aware that the Wyeth district court decision has been appealed to the U.S. Court of Appeals for the Federal Circuit (CAFC) but that no decision has yet been issued. Applicants, therefore, request that a decision on this request be delayed until the CAFC decides this appeal.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-0815, order number GHDX-008.

Respectfully submitted,  
BOZICEVIC, FIELD & FRANCIS LLP

Date: September 30, 2009

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**Patent Term Adjustments**

Patent Term Adjustment (PTA) for Application Number: 10/758,307

Filing or 371(c) Date:	01-14-2004	USPTO Delay (PTO) Delay (days):	933
Issue Date of Patent:	08-04-2009	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL) Delay (days):	470
Post-Issue Petitions (days):	+0	Total PTA (days):	463
USPTO Adjustment(days):	+0	Explanation Of Calculations	

**Patent Term Adjustment History**

Date	Contents Description	PTO(Days)	APPL(Days)
07-15-2009	PTA 36 Months	497	
08-04-2009	Patent Issue Date Used in PTA Calculation		
06-25-2009	Dispatch to FDC	⌘	
06-05-2009	Application Is Considered Ready for Issue	⌘	
06-05-2009	Mail Response to 312 Amendment (PTO-271)	⌘	
06-05-2009	Response to Amendment under Rule 312	⌘	
06-03-2009	Amendment after Notice of Allowance (Rule 312)		3
06-03-2009	Issue Fee Payment Verified		
06-03-2009	Issue Fee Payment Received		
05-29-2009	Sequence Forwarded to Pubs on Tape		
05-14-2009	Mail Notice of Allowance	42	
05-12-2009	Document Verification	⌘	
05-12-2009	Notice of Allowance Data Verification Completed	⌘	
05-11-2009	Examiner's Amendment Communication	⌘	
05-07-2009	Information Disclosure Statement considered	⌘	
05-07-2009	Information Disclosure Statement (IDS) Filed	⌘	
04-28-2009	Case Docketed to Examiner in GAU	⌘	
01-07-2009	Date Forwarded to Examiner	⌘	
12-02-2008	Response after Non-Final Action		52
12-02-2008	Request for Extension of Time - Granted		⌘
10-16-2008	Mail Examiner Interview Summary (PTOL - 413)		⌘
10-07-2008	Examiner Interview Summary Record (PTOL - 413)		⌘
10-09-2008	Correspondence Address Change		⌘
10-01-2008	Mail-Petition Decision - Dismissed		⌘
10-01-2008	Petition Decision - Dismissed		⌘
10-01-2008	Change in Power of Attorney (May Include Associate POA)		⌘
10-01-2008	Correspondence Address Change		⌘
07-17-2008	Petition Entered		⌘
07-11-2008	Mail Non-Final Rejection	22	
07-09-2008	Non-Final Rejection	⌘	
05-01-2008	Date Forwarded to Examiner	⌘	
02-19-2008	Response after Non-Final Action		32
02-19-2008	Request for Extension of Time - Granted		⌘
10-18-2007	Mail Non-Final Rejection		⌘

10-15-2007	Non-Final Rejection		
02-03-2006	Information Disclosure Statement considered		
08-10-2006	Information Disclosure Statement considered		
09-11-2007	Case Docketed to Examiner in GAU		
08-07-2007	Date Forwarded to Examiner		
08-03-2007	Response to Election / Restriction Filed		168
08-03-2007	Request for Extension of Time - Granted		⌘
05-25-2005	Information Disclosure Statement considered		⌘
05-25-2005	Information Disclosure Statement (IDS) Filed		⌘
05-03-2007	Mail Notice of Informal or Non-Responsive Amendment		⌘
02-22-2007	Date Forwarded to Examiner		⌘
02-16-2007	Informal or Non-Responsive Amendment after Examiner Action		⌘
02-16-2007	Response to Election / Restriction Filed		116
01-16-2007	Mail Notice of Informal or Non-Responsive Amendment		⌘
11-06-2006	Date Forwarded to Examiner		⌘
10-23-2006	Informal or Non-Responsive Amendment after Examiner Action		⌘
10-23-2006	Response to Election / Restriction Filed		⌘
09-21-2006	Mail Restriction Requirement	18	
09-21-2006	Case Docketed to Examiner in GAU	⌘	
09-18-2006	Requirement for Restriction / Election	⌘	
08-10-2006	Reference capture on IDS	⌘	
08-10-2006	Information Disclosure Statement (IDS) Filed		99
08-10-2006	Information Disclosure Statement (IDS) Filed		
07-12-2006	Date Forwarded to Examiner		⌘
06-30-2006	Supplemental Response		⌘
05-12-2006	Date Forwarded to Examiner		⌘
05-03-2006	Response to Election / Restriction Filed		⌘
05-03-2006	Request for Extension of Time - Granted		
03-03-2006	Mail Restriction Requirement	354	
03-01-2006	Requirement for Restriction / Election	⌘	
02-03-2006	Reference capture on IDS	⌘	
02-03-2006	Information Disclosure Statement (IDS) Filed	⌘	
02-03-2006	Information Disclosure Statement (IDS) Filed	⌘	
11-08-2005	Preliminary Amendment	⌘	
10-31-2005	Case Docketed to Examiner in GAU	⌘	
03-02-2005	Information Disclosure Statement (IDS) Filed	⌘	
03-02-2005	Information Disclosure Statement (IDS) Filed	⌘	
10-28-2004	IFW TSS Processing by Tech Center Complete	⌘	
06-04-2004	Substitute Specification Filed	⌘	
06-04-2004	Preliminary Amendment	⌘	
10-28-2004	Case Docketed to Examiner in GAU	⌘	
07-09-2004	Application Return from OIPE	⌘	
07-09-2004	Application Return TO OIPE	⌘	
07-08-2004	Application Dispatched from OIPE	⌘	
07-09-2004	Application Is Now Complete	⌘	

06-04-2004	Payment of additional filing fee/Preexam	⌵
06-04-2004	Small Entity Statement (37 CFR 1.27)	⌵
01-14-2004	Claim Preliminary Amendment	⌵
04-06-2004	Notice Mailed--Application Incomplete--Filing Date Assigned	⌵
03-17-2004	Cleared by L&R (LARS)	⌵
03-04-2004	Referred to Level 2 (LARS) by OIPE CSR	⌵
02-02-2004	IFW Scan & PACR Auto Security Review	⌵
01-29-2004	CRF Is Good Technically / Entered into Database	⌵
01-14-2004	CRF Disk Has Been Received by Preexam / Group / PCT	⌵
01-14-2004	Initial Exam Team nn	⌵

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